

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

KEVIN NORRIS,

Petitioner,

v.

STEVEN O'BRIEN,

Respondent.

Civil Action No. 05-11353-MLW

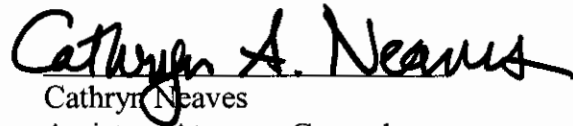
**RESPONDENT'S MOTION TO DISMISS PETITION
FOR WRIT OF HABEAS CORPUS AS TIME-BARRED**

Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, the respondent respectfully submits this motion to dismiss the petition for writ of habeas corpus filed by the petitioner, Kevin Norris. The petition must be dismissed as time-barred under 28 U.S.C. § 2244(d), the statute of limitations for federal habeas corpus petitions, which is contained in the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). As is set forth in greater detail in the accompanying memorandum law, the petitioner's conviction became final on July 28, 1996, ninety days after the Supreme Judicial Court denied his application for further appellate review. As such, the statute of limitations expired one year later on July 28, 1997. The petitioner did not file a habeas corpus petition in this Court until June 27, 2005. Moreover, the statute of limitations was not tolled at any point between July 28, 1996 and July 28, 1997. Accordingly, the petition must be dismissed as time-barred.¹

¹ Since it is clear from the face of the petition and the attached docket sheets that the petition is time-barred, the respondent will not, in the interest of economy, answer the petition or address any additional affirmative defenses. Should this Court rule that the petition is not time-barred, the respondent respectfully requests thirty days from the date of receipt of this Court's order to answer the petitioner or file a supplemental memorandum which addresses the additional affirmative defenses and/or the merits of the petition.

petition with prejudice on the grounds that it is time-barred.

Respectfully submitted,
THOMAS F. REILLY
ATTORNEY GENERAL



Cathryn Neaves
Assistant Attorney General
Criminal Bureau
One Ashburton Place
Boston, Massachusetts 02108
(617) 727-2200, ext. 2557
BBO # 556798

Dated: July 25, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the petitioner, Kevin Norris, on July 25, 2005, by depositing the copy in the office depository for collection and delivery by first-class mail, postage pre-paid, to him as follows: Kevin Norris, *pro se*, North Central Correctional Institution, P.O. Box 466, 500 Colony Road, Gardner, Massachusetts 01440.



Jonathan Offit